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May 7, 1998

Magalie Roman Salas, Secretary  
Federal Communications Commission  
Washington, DC 20554

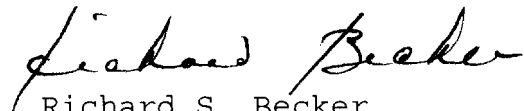
Re: RM No. 9258

Dear Ms. Roman Salas:

Transmitted herewith on behalf of TSR Wireless LLC ("TSR Wireless") are one (1) original paper and four (4) paper copies of TSR Wireless's "Comments" in the above-referenced proceeding. TSR Wireless's Comments are being filed in accordance with the procedures specified in the Commission's Public Notice, DA 98-743 (April 17, 1998).

Should any questions arise with respect to this matter, please communicate directly with this office.

Respectfully submitted,



Richard S. Becker  
Attorney for TSR Wireless LLC

Enclosures

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )  
 )  
**CONNECTICUT DEPARTMENT OF PUBLIC** ) RM No. 9258  
**UTILITY CONTROL** )  
 )  
Petition for Rulemaking Regarding )  
Technology-Specific or Service- )  
Specific Area Code Overlays )

To: The Commission

**COMMENTS**

TSR Wireless LLC ("TSR Wireless"), by its attorneys and pursuant to the Commission's Public Notice<sup>1</sup> in the above-captioned proceeding, hereby comments on the "Petition For Rulemaking" ("Petition") filed with the Commission by the Connecticut Department of Public Utility Control ("DPUC") on March 31, 1998,<sup>2</sup> wherein the DPUC requested that the Commission reverse its prior decisions and policies prohibiting the implementation by state public utility commissions ("PUC's") of service-specific area code overlays ("Service-Specific Overlays") as a method of addressing area code exhaustion. As set forth herein, TSR Wireless generally opposes the DPUC's request as contrary to the Commission's continuing efforts to encourage competition among all telecommunications providers and TSR Wireless submits that the implementation of non service-specific area code overlays ("All

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<sup>1</sup>Public Notice, "Connecticut Department of Public Utility Control Files Petition For Rulemaking, Public Comment Invited," DA 98-743 (released April 17, 1998) ("Public Notice").

<sup>2</sup>As noted by the Commission in its Public Notice, the DPUC's filing was actually titled "Amendment To Rulemaking". However, consistent with the Commission's Public Notice, the instant Comments refer to the DPUC's filing as a "Petition For Rulemaking".

Services Overlays") effectively address area code shortages while not running afoul of the Commission's pro-competition policies and Rules. In addition, TSR Wireless respectfully submits that, in the event that the Commission grants the DPUC's request and reverses the Commission's current prohibition on the implementation of Service-Specific Overlays, certain conditions must be placed on the ability of PUC's to implement such area code relief in order to ensure, to the greatest extent possible, the equal treatment of all telecommunications providers in any given state.

**I. TSR Wireless's Interest In This Proceeding**

1. As a communications company primarily engaged in the provision of one-way paging services, TSR Wireless is interested in the issues raised in the DPUC's Petition. As one of the largest paging companies in the United States, TSR Wireless currently provides wide-area, one-way paging service throughout the northeast corridor of the United States, including Connecticut, on channels allocated pursuant to Part 22 of the FCC's Rules and on 929 MHz Private Carrier Paging Channels allocated pursuant to Part 90 of the FCC's Rules.

2. As noted by the DPUC in the Petition, the issues raised in the Petition relate directly to the DPUC's ongoing proceeding in DPUC Docket 96-11-10 concerning the exhaustion of NXX codes in the 203 and 806 area codes in Connecticut and the implementation by the DPUC of measures to delay and/or prevent such exhaustion.<sup>3</sup> In a

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<sup>3</sup>See, "In the Matter of DPUC Review of Management of Telephone Numbering Resources In Connecticut", Docket No. 96-11-10 ("DPUC Proceeding").

"Draft Decision" issued on December 8, 1997, the DPUC tentatively concluded that it would address the NXX shortage in the 203 and 860 area codes by, inter alia: (i) requiring telecommunications providers to return unopened NXX codes; (ii) reassigning NXX codes back to such providers in 1,000 number blocks; and (iii) implementing permanent and interim Local Number Portability ("LNP") measures in the Hartford and New Haven Metropolitan Statistical Areas.<sup>4</sup>

3. In "Comments" filed with the DPUC on December 20, 1997, TSR Wireless opposed the DPUC's proposed Number Pooling and LNP measures and TSR Wireless suggested that an All Services Overlay would more efficiently achieve the DPUC's goals in the DPUC Proceeding.<sup>5</sup> In addition, TSR Wireless requested further clarification from the DPUC regarding its proposed Number Pooling measures. Accordingly, as a telecommunications provider in Connecticut, and a participant in the DPUC Proceeding dealing directly with the issues raised in the Petition, TSR Wireless is uniquely interested in the issues raised by the DPUC and TSR Wireless's Comments on the Petition are respectfully submitted below.

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<sup>4</sup>Draft Decision, p.37-40; The process by which the DPUC proposed to require providers to return unopened NXX codes and to reassign such codes in 1,000 number blocks will be referred to herein as "Number Pooling".

<sup>5</sup>It should be noted that such Comments were filed in the name of TSR Wireless's predecessor-in-interest, TSR Paging Inc. ("TSR Paging"). However, pursuant to Commission authority, TSR Paging subsequently merged with American Paging, Inc. and its subsidiaries (collectively "API"), to form a new entity, TSR Wireless (See, e.g., File Nos. 21092-CD-AL-98, 21093-CD-AL-98).

## II. TSR Wireless' Comments

### A. **The DPUC Has Not Demonstrated That The Commission's Prohibition On Service-Specific Overlays Must Be Reversed**

4. In two (2) separate decisions issued in 1995<sup>6</sup> and 1996,<sup>7</sup> the Commission confirmed that the implementation by state PUC's of Service Specific Overlays must be prohibited in that such measures would be unreasonably discriminatory and anti-competitive in violation of the Communications Act of 1934, as amended (the "Act"),<sup>8</sup> and the policies set forth in the Telecommunications Act of 1996.<sup>9</sup> In this regard, the Commission stated that the implementation by PUC's of All-Services Overlays would be permitted subject only to the following conditions ("All Service Overlay Conditions"): (i) that PUC's require "mandatory 10-digit local dialing by all customers between and within area codes in the area covered by the new code", and (ii) that every existing telecommunications carrier be afforded access to "at least one NXX in the existing area code, to be assigned during the 90-day period

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<sup>6</sup>"Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois", Declaratory Ruling and Order, IAD File No. 94-102, 10 FCC Rcd 4596, 4605-4609 (1995) ("Ameritech Order")

<sup>7</sup>Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, Second Report And Order and Memorandum Opinion and Order, FCC 96-333, 11 FCC Rcd 19392, 19513-19521 (1996) (hereinafter "Second R&O").

<sup>8</sup>See Ameritech Order, p.4607-4608; Second R&O, p.19513.

<sup>9</sup>Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "1996 Act"); Second R&O, 11 FCC Rcd at 19398-19399, 19517.

preceding the introduction of the overlay."<sup>10</sup>

5. The DPUC's primary justification for requesting the Commission to reverse its prohibition on the utilization of Service Specific Overlays is that "no competition between the wireline and wireless industries currently exists. Nor does it appear that competition between the two industries will exist in the very near future."<sup>11</sup> In support of this claim, the DPUC concluded that "commercial mobile radio service ["CMRS"] providers have not contributed to various universal service programs, telecommunications relay service programs nor have they been held to the same requirements that have been imposed on wireline carriers."<sup>12</sup>

6. TSR Wireless respectfully submits that the DPUC's analysis is fundamentally flawed. First, other than a brief reference to testimony provided to the DPUC in 1997 on behalf of Bell Atlantic Mobile, the DPUC does not provide any support in its Petition to buttress its claim that there currently exists no competition between wireline and wireless service providers and that such competition is not likely occur. Second, even assuming, arguendo, that the pro-competition goals of the 1996 Act are not being achieved at the rate envisioned by Congress and the Commission, TSR Wireless respectfully submits that the Commission does not have the discretion to simply abandon the important

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<sup>10</sup>Second R&O, 11 FCC Rcd at 19518.

<sup>11</sup>Petition, p.8.

<sup>12</sup>Id. at 9.

statutory mandate imposed by Congress, namely, to erect a "procompetitive, deregulatory national framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."<sup>13</sup> In this regard, the DPUC's (understandable) frustrations regarding area code relief issues in Connecticut simply do not justify the abandonment of the 1996 Act's lofty national objectives. Third, the DPUC's allegations of disparate regulatory treatment between wireline providers and CMRS providers are becoming increasingly inaccurate. For example, contrary to the DPUC's assertion, interstate CMRS providers are subject to the federal Telecommunications Relay Services program.<sup>14</sup> In addition, the Commission recently imposed, for the first time, federal Universal Service filing and contribution requirements on all interstate telecommunications service providers, including interstate CMRS providers.<sup>15</sup>

7. Accordingly, TSR Wireless opposes the DPUC's request that the Commission reverse its prohibition on Service-Specific Overlays and TSR Wireless respectfully submits that All-Services Overlays, implemented with the Conditions previously mandated by the

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<sup>13</sup>S.Conf.Rep.No. 104-230, 104th Cong., 2d Sess.1 (1996).

<sup>14</sup>See, "In the Matter Of Telecommunications Relay Services, and the Americans With Disabilities Act of 1990", CC Docket No. 90-571, Third Report and Order, ¶12 (1993).

<sup>15</sup>See "In the Matter of Federal-State Joint Board on Universal Service", Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 9179 (1997).

Commission, should effectively and fairly address telephone numbering shortages of the kind currently being experienced in Connecticut. As an increasing number of entities, including internet providers and CMRS providers, enter the local exchange marketplace and as phone companies begin to expand their offerings to include CMRS service pursuant to the flexibility offered by the 1996 Act, the imposition of Service-Specific Overlays on wireless providers by state PUC's will substantially inhibit the ability of CMRS carriers to effectively compete in the telecommunications marketplace. Contrary to the DPUC's claim, the regulatory lines between traditional wireline and wireless providers are becoming blurred in furtherance of the objectives of the 1996 Act. Any potential which may exist at this time for serious competition between such telecommunications providers will likely be impeded in the event that Service-Specific Overlays are permitted by the Commission.



**B. Any Service-Specific Overlay Permitted By The Commission Must Include Specific Conditions To Ensure, To The Extent Possible, Compliance With The Pro-Competition Policies Of The 1996 Act**

8. In the event that the Commission approves the DPUC's request for the imposition of Service-Specific Overlays, certain conditions must be required by the Commission in order to ensure that all telecommunications providers are treated equally, to the extent possible under such a scenario. Such conditions should include:

- Mandatory ten (10) digit local dialing imposed on all customers of telecommunications service, including customers of wireline and wireless services. As stated above, this is currently one (1) of the All Service Overlay Conditions currently imposed by the Commission.<sup>16</sup>
- Deadlines must be established within which all wireless providers must cease assigning numbers with the "old" area code. This will ensure a simultaneous conversion to the "new" overlay code without favoring any particular wireless provider. This condition could be implemented in conjunction with the second all Service Overlay Condition described above, namely, that existing carriers be provided with at least one NXX in the existing area code for assignment during the ninety (90) day period prior to the implementation of the overlay.<sup>17</sup>
- The costs of public education concerning a Service-Specific Overlay must be borne equally by wireline and wireless carriers, both of which are substantially impacted by such a measure.

Although TSR Wireless generally opposes the implementation of Service-Specific Overlays, TSR Wireless believes that the imposition of the above conditions may at least mitigate the negative effects of such a measure on the disparately-treated wireless industry.

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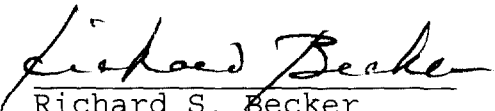
<sup>16</sup>See p.4, supra.

<sup>17</sup>See p.4-5, supra.

**WHEREFORE**, for all of the foregoing reasons, TSR Wireless respectfully submits these Comments in response to the Commission's April 17 Public Notice in the above-captioned proceeding.

Respectfully submitted,

**TSR WIRELESS LLC**

By:   
Richard S. Becker  
James S. Finerfrock  
Jeffrey E. Rummel

Its Attorneys

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Date: May 7, 1998

**CERTIFICATE OF SERVICE**

I, Susan Mitchual, a secretary in the law firm of Richard S. Becker & Associates, Chartered, hereby certify that I have on this 7th day of May, 1998, sent by First Class United States mail, postage prepaid, copies of the foregoing "**COMMENTS**" to the following:

Donald W. Downes, Chairman  
Glenn Arthur, Vice-Chairman  
Jack Goldberg, Commissioner  
John W. Betkoski, III, Commissioner  
Linda Kelly Arnold, Commissioner  
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